

# House Daily Reader

# Tuesday, February 07, 2006

[illegible]

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

444M0099

HOUSE TAXATION COMMITTEE ENGROSSED NO.

**HB 1069** - 02/02/2006

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Representatives Dykstra and Rounds and Senators Napoli, Bartling, and Gray

- 1 FOR AN ACT ENTITLED, An Act to prohibit the public sale of tax certificates.
- 2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
- 3 Section 1. Notwithstanding the provisions of chapters 10-23, 10-24, and 10-25, no county
- 4 may sell any tax certificate after July 1, 2006. The county shall be the holder of any tax
- 5 certificate issued by the county after July 1, 2006. The county treasurer shall continue to serve
- 6 notice on the owner of record of the real property, publish notice, and attend to the other
- 7 administrative provisions imposed by chapter 10-23, 10-24, and 10-25. Nothing in this section
- 8 affects the holder of any existing tax certificate, the method in which the tax certificate is
- 9 redeemed, or the sale of real property for taxes or assessments.



# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

967M0248

HOUSE APPROPRIATIONS COMMITTEE ENGROSSED

NO. **HB 1103** - 02/03/2006

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Representatives Haverly, Buckingham, Davis, Faehn, Halverson, Hanks, Howie, Klaudt, Murschel, Peters, Rausch, Roberts, Tidemann, Tornow, Turbiville, Van Etten, and Willadsen and Senators Napoli, Adelstein, Apa, Duniphan, Greenfield, Koetzle, and Two Bulls

1 FOR AN ACT ENTITLED, An Act to appropriate money to postsecondary technical institutes  
2 for the maintenance and repair of buildings.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. There is hereby appropriated from the state general fund the sum of three hundred  
5 sixty thousand dollars (\$360,000), or so much thereof as may be necessary, to the Department  
6 of Education for the maintenance and repair of buildings of postsecondary technical institutes.  
7 Moneys may be distributed after the secretary of the Department of Education has received a  
8 schedule of tuition, fees, and other charges from each postsecondary technical institute which  
9 indicates that a maintenance and repair fee of one dollar per credit hour has been imposed.

10 Section 2. The secretary of the Department of Education shall approve vouchers and the  
11 state auditor shall draw warrants to pay expenditures authorized by this Act.

12 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by  
13 June 30, 2007, shall revert in accordance with § 4-8-21.



# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

771M0417

HOUSE TAXATION COMMITTEE ENGROSSED NO.

**HB 1154** - 02/02/2006

Introduced by: Representatives Dykstra, Dennert, Faehn, Fryslie, Haley, Halverson, Hargens, Jensen, McCoy, Miles, Novstrup, Rhoden, Sigdestad, and Street and Senators Peterson (Jim), Bartling, Duenwald, Gant, Gray, Greenfield, Hansen (Tom), Hanson (Gary), Hundstad, Koskan, Lintz, McNenny, Olson (Ed), Smidt, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to impose an excise tax on the gross receipts from the sale  
2 and use of farm machinery, farm attachment units, and irrigation equipment, to exempt the  
3 gross receipts from the sale of farm machinery, farm attachment units, and irrigation  
4 equipment from sales and use tax, and to declare an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. There is hereby imposed an excise tax of four percent on the gross receipts from  
7 the sale, resale, or lease of farm machinery, attachment units, and irrigation equipment used  
8 exclusively for agricultural purposes. However, if any trade-in or exchange of used farm  
9 machinery, attachment units, and irrigation equipment is involved in the transaction, the excise  
10 tax is only due and may only be collected on the cash difference.

11 Section 2. An excise tax is hereby imposed on the privilege of the use, storage, and  
12 consumption in this state of farm machinery, attachment units, and irrigation equipment used  
13 exclusively for agricultural purposes purchased or leased for use in this state at the same rate



1 of the purchase price of said property as imposed pursuant to section 1 of this Act.

2 Section 3. An excise tax is imposed at the same rate as imposed by section 1 of this Act on  
3 the privilege of the use, storage, or consumption in this state of farm machinery, attachment  
4 units, and irrigation equipment used exclusively for agricultural purposes not originally  
5 purchased for use in this state, but thereafter used, stored, or consumed in this state, at the same  
6 rate as provided in section 1 of this Act and imposed on the fair market value of the property  
7 at the time it is brought into this state. However, if any trade-in or exchange of used farm  
8 machinery, attachment units, and irrigation equipment is involved in the transaction, the excise  
9 tax is only due and may only be collected on the cash difference. The use, storage, or  
10 consumption of farm machinery, attachment units, and irrigation equipment used exclusively  
11 for agricultural purposes that is more than seven years old at the time it is brought into the state  
12 by the person who purchased such property for use in another state is exempt from the tax  
13 imposed by this Act.

14 Section 4. For purposes of this Act, farm machinery, includes all-terrain vehicles of three  
15 or more wheels used exclusively by the purchaser for agricultural purposes on agricultural land.  
16 The purchaser shall sign and deliver to the seller a statement that the all-terrain vehicle will be  
17 used exclusively for agricultural purposes.

18 Section 5. Farm machinery and attachment units, other than replacement parts, and irrigation  
19 equipment sold at public auction shall be taxed pursuant to section 1 of this Act without regard  
20 to its intended use.

21 Section 6. The tax imposed by section 1 of this Act shall be collected and administered by  
22 the Department of Revenue and Regulation.

23 Section 7. Any person who holds a license issued pursuant to this Act or chapters 10-33A,  
24 10-45, 10-45D, 10-46A, 10-46B, or 10-52A or who is a person whose receipts are subject to the

1 tax imposed by or this Act or chapters 10-33A, 10-45, 10-45D, 10-46A, 10-46B, or 10-52A  
2 shall, except as otherwise provided in this section, file a return, and pay any tax due, to the  
3 Department of Revenue and Regulation on or before the twentieth day of the month following  
4 each monthly period. The return shall be filed on forms prescribed and furnished by the  
5 department.

6 If the person remits the tax by electronic transfer to the state, the person shall file the return  
7 by electronic means on or before the twenty-third day of the month following each monthly  
8 period and remit the tax on or before the second to the last day of the month following each  
9 monthly period.

10 The secretary may require or allow a person to file a return, and pay any tax due, on a basis  
11 other than monthly and the return and remittance is due the last day of the month following the  
12 reporting period, or at time otherwise determined by the secretary.

13 The secretary of revenue and regulation may grant an extension of not more than five days  
14 for filing a return and remittance. However, the secretary of revenue and regulation may grant  
15 an extension for remitting the tax to a qualified business as provided in §§ 10-45-99 to 10-45-  
16 107, inclusive, for six months.

17 Unless an extension is granted, penalty or interest under § 10-59-6 shall be paid if a return  
18 or remittance is not made on time.

19 Section 8. Where applicable and not inconsistent with this Act, the provisions of chapters  
20 10-45 and 10-46, including the exemption, definition, administrative, collection, and  
21 enforcement provisions, including penalty and interest, are applicable to the tax imposed by this  
22 Act.

23 Section 9. The revenue from the tax imposed by this Act shall be deposited in the general  
24 fund.

1       Section 10. There are exempted from the tax imposed by this Act, gross receipts from the  
2       rental of devices primarily used to apply fertilizers and pesticides as defined in § 38-20A-1, for  
3       agricultural purposes, if the tax imposed by this Act was paid upon the original purchase of the  
4       device.

5       Section 11. The secretary of revenue and regulation may promulgate rules pursuant to  
6       chapter 1-26 concerning:

- 7       (1)    Licensing, including bonding and filing license applications;
- 8       (2)    The filing of returns and payment of the tax;
- 9       (3)    Determining the application of the tax and exemptions;
- 10      (4)    Taxpayer record-keeping requirements;
- 11      (5)    Determining auditing methods; and
- 12      (6)    Determining the age and value of the farm machinery, attachment units, and  
13            irrigation equipment brought into this state.

14      Section 12. Any person who:

- 15      (1)    Makes any false or fraudulent return in attempting to defeat or evade the tax imposed  
16            by this Act is guilty of a Class 6 felony;
- 17      (2)    Fails to pay tax due under this Act within thirty days from the date the tax becomes  
18            due is guilty of a Class 1 misdemeanor;
- 19      (3)    Fails to keep the records and books required by this Act or refuses to exhibit these  
20            records to the secretary of revenue or the secretary's agents for the purpose of  
21            examination is guilty of a Class 1 misdemeanor;
- 22      (4)    Fails to file a return required by this Act within thirty days from the date the return  
23            is due is guilty of a Class 1 misdemeanor;
- 24      (5)    Willfully violates any rule of the secretary of revenue for the administration and

1 enforcement of the provisions of this Act is guilty of a Class 1 misdemeanor; or

2 (6) Violates either subdivision (2) or subdivision (4) two or more times in any twelve-  
3 month period is guilty of a Class 6 felony.

4 For purposes of this section, the term, person, includes an officer, member, member-  
5 manager, partner, general partner, or limited partner of an entity organized pursuant to Title 47  
6 or 48 who has control or supervision of, or is charged with the responsibility for, making tax  
7 returns or payments pursuant to this Act.

8 Section 13. That § 10-59-1 be amended to read as follows:

9 10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes  
10 or fees imposed by, and to any civil or criminal investigation authorized by, chapters 10-39, 10-  
11 39A, 10-39B, 10-43, 10-45, 10-45D, 10-46, 10-46A, 10-46B, 10-46C, 10-47B, 10-52, 10-52A,  
12 32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9, 32-10, and 34A-13 and §§ 22-25-48, 49-31-51, 50-4-13  
13 to 50-4-17, inclusive, this Act, and the provisions of chapter 10-45B.

14 Section 14. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
15 follows:

16 There are exempted from the provisions of this chapter and from the tax imposed by it, gross  
17 receipts from the sale, resale, or leasing of farm machinery, attachment units, and irrigation  
18 equipment used exclusively for agricultural purposes. The term, farm machinery, includes  
19 all-terrain vehicles of three or more wheels used exclusively by the purchaser for agricultural  
20 purposes on agricultural land. The purchaser shall sign and deliver to the seller a statement that  
21 the all-terrain vehicle will be used exclusively for agricultural purposes.

22 Section 15. That § 10-45-3 be repealed.

23 ~~10-45-3. There is hereby imposed a tax of four percent on the gross receipts from the sale~~  
24 ~~or resale of farm machinery and attachment units other than replacement parts; or irrigation~~



1 ~~equipment used exclusively for agricultural purposes by licensed South Dakota retailers.~~  
2 ~~However, if any trade-in or exchange of used farm machinery is involved in the transaction, the~~  
3 ~~tax is only due and shall be collected only on the cash difference.~~

4 Section 16. That § 10-45-3.2 be repealed.

5 ~~— 10-45-3.2. For purposes of § 10-45-3, farm machinery shall include all-terrain vehicles of~~  
6 ~~three or more wheels used exclusively by the purchaser for agricultural purposes on agricultural~~  
7 ~~land. The purchaser shall sign and deliver to the seller a statement that the all-terrain vehicle~~  
8 ~~will be used exclusively for agricultural purposes.~~

9 Section 17. That § 10-45-3.3 be repealed.

10 ~~— 10-45-3.3. Farm machinery and attachment units, other than replacement parts, and~~  
11 ~~irrigation equipment sold at public auction shall be taxed pursuant to § 10-45-3 without regard~~  
12 ~~to its intended use.~~

13 Section 18. That § 10-45-5 be amended to read as follows:

14 10-45-5. There is imposed a tax at the rate of four percent upon the gross receipts of any  
15 ~~person from engaging in the business of leasing farm machinery or irrigation equipment used~~  
16 ~~for agricultural purposes and~~ four percent upon the gross receipts of any person from engaging  
17 or continuing in any of the following businesses or services in this state: abstracters;  
18 accountants; architects; barbers; beauty shops; bill collection services; blacksmith shops; car  
19 washing; dry cleaning; dyeing; exterminators; garage and service stations; garment alteration;  
20 cleaning and pressing; janitorial services and supplies; specialty cleaners; laundry; linen and  
21 towel supply; membership or entrance fees for the use of a facility or for the right to purchase  
22 tangible personal property or services; photography; photo developing and enlarging; tire  
23 recapping; welding and all repair services, except farm machinery, farm attachment units, or  
24 irrigation equipment repair services; cable television; and rentals of tangible personal property

1 except leases of tangible personal property between one telephone company and another  
2 telephone company, motor vehicles as defined by § 32-5-1 leased under a single contract for  
3 more than twenty-eight days and mobile homes. However, the specific enumeration of  
4 businesses and professions made in this section does not, in any way, limit the scope and effect  
5 of § 10-45-4.

6 Section 19. That § 10-45-5.2 be amended to read as follows:

7 10-45-5.2. The following services enumerated in the Standard Industrial Classification  
8 Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and  
9 Budget, Office of the President, are specifically subject to the tax levied by this chapter: metal  
10 mining services (group no. 108); coal mining (major group 12); nonmetallic minerals (except  
11 fuels) services (group no. 148); service industries for the printing trade (group no. 279); coating,  
12 engraving and allied services (group no. 347); communication, electric and gas services  
13 (division E except group nos. 483, 494 and 495); hotels, motels, and tourist courts (group no.  
14 701); rooming and boarding houses (group no. 702); camps and recreational vehicle parks  
15 (group no. 703); personal services (major group 72); business services (major group 73);  
16 automotive repair, services, and parking (major group 75); miscellaneous repair services (major  
17 group 76), except farm machinery, farm attachment units, or irrigation equipment repair  
18 services; amusement and recreation services (major group 79); legal services (major group 81);  
19 landscape and horticultural services (group no. 078); engineering, accounting, research,  
20 management, and related services (major group 87, except industry no. 8733); title abstract  
21 offices (group no. 654); consumer credit reporting agencies, mercantile reporting agencies, and  
22 adjustment and collection agencies (group no. 732); real estate agents and managers (group no.  
23 653); funeral service and crematories (group no. 726), except that purchases of goods or services  
24 with money advanced as an accommodation are retail purchases and are not includable in gross

1 receipts for funeral services and fees paid or donated for religious ceremonies are not includable  
2 in gross receipts for funeral services; loan brokers (industry no. 6163); repair shops and related  
3 services, not elsewhere classified (industry no. 7699) but only locksmiths and locksmith shops;  
4 and floor laying and other floor work not elsewhere classified (industry no. 1752). In addition,  
5 the following services are also specifically subject to the tax levied by this chapter: livestock  
6 slaughtering services; dog grooming services; airplane, helicopter, balloon, dirigible and blimp  
7 rides for amusement or sightseeing; the collection and disposal of solid waste; and all appraiser's  
8 services. The services enumerated in this section may not be construed as a comprehensive list  
9 of taxable services but rather as a representative list of services intended to be taxable under this  
10 chapter.

11 Section 20. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 There are exempted from the provisions of this chapter and from the tax imposed by it, gross  
14 receipts from the sale, resale, or lease of farm machinery, attachment units, and irrigation  
15 equipment used exclusively for agricultural purposes. The term, farm machinery, includes  
16 all-terrain vehicles of three or more wheels used exclusively by the purchaser for agricultural  
17 purposes on agricultural land. The purchaser shall sign and deliver to the seller a statement that  
18 the all-terrain vehicle will be used exclusively for agricultural purposes.

19 Section 21. That § 10-45-16.1 be amended to read as follows:

20 10-45-16.1. There are hereby specifically exempted from the provisions of this chapter and  
21 from the computation of the amount of tax imposed by it, gross receipts from the sale of  
22 pesticides, as defined in § 38-20A-1, to be used exclusively by the purchaser for agricultural  
23 purposes. Any product or substance to be used in conjunction with the application or use of  
24 pesticides for agricultural purposes is also exempt. ~~Such~~ The products or substances include;

1 ~~but are not limited to~~, adjuvants, surfactants, ammonium sulfate, inoculants, drift retardants,  
2 water conditioners, seed treatments, foam markers, and foam dyes. Equipment, other than farm  
3 machinery, attachment units, and irrigation equipment uses exclusively for agricultural purposes  
4 for the application of pesticides and related products and substances is not exempt. The tax  
5 imposed by this chapter on endoparasitocides and ectoparasitocides shall be deposited in the  
6 veterinary student tuition and animal disease research and diagnostic laboratory fund to be used  
7 for veterinary student tuition grants and the operations and activities conducted by the State  
8 Animal Disease Research and Diagnostic Laboratory established in § 13-58-13.

9 Section 22. That § 10-46-17.5 be amended to read as follows:

10 10-46-17.5. The use in this state of ~~insecticides, herbicides, pesticides, rodenticides, and~~  
11 ~~fungigants~~ as defined in § 38-20A-1 to be used exclusively for agricultural purposes is  
12 specifically exempted from the tax imposed by this chapter. Any product or substance to be used  
13 in conjunction with the application or use of pesticides for agricultural purposes is also exempt.  
14 These products or substances include adjuvants, surfactants, ammonium sulfate, inoculants, drift  
15 retardants, water conditioners, seed treatments, foam markers, and foam dyes. Equipment, other  
16 than farm machinery, attachment units, and irrigation equipment used exclusively for  
17 agricultural purposes, for the application of pesticides and related products and substances is not  
18 exempt. The tax imposed by this chapter on endoparasitocides and ectoparasitocides shall be  
19 deposited in the veterinary student tuition and animal disease research and diagnostic laboratory  
20 fund to be used for veterinary student tuition grants and the operations and activities conducted  
21 by the State Animal Disease Research and Diagnostic Laboratory established in § 13-58-13.

22 Section 23. That § 10-12A-4 be amended to read as follows:

23 10-12A-4. The department may enter into tax collection agreements with any Indian tribe  
24 under the provisions of this chapter and chapter 1-24. These agreements may provide for the

collection of any of the following state taxes and any tribal taxes imposed by a tribe that are identical to the following state taxes:

- (1) The retail sales and service tax imposed by chapter 10-45;
- (2) The use tax imposed by chapter 10-46;
- (3) The contractors' excise tax imposed by chapter 10-46A;
- (4) The alternate contractors' excise tax imposed by chapter 10-46B;
- (5) The cigarette tax imposed by chapter 10-50;
- (6) The motor vehicle excise tax imposed by chapter 32-5B;
- (7) The fuel excise tax imposed by chapter 10-47B;
- (8) The wholesale tax on tobacco products imposed by chapter 10-50;
- (9) The amusement device tax imposed by chapter 10-58; ~~or~~
- (10) The gross receipts tax on visitor related businesses imposed by chapter 10-45D;
- (11) The excise tax on farm machinery, attachment units, and irrigation equipment imposed by this Act.

The agreement may provide for the retention by the department of an agreed-upon percentage of the gross revenue as an administrative fee.

Section 24. Sections 1 to 20, inclusive, are effective on April 1, 2006.

Section 25. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

673M0607

HOUSE EDUCATION COMMITTEE ENGROSSED NO.

**HB 1194** - 02/03/2006

Introduced by: Representatives Weems, Brunner, Davis, Deadrick, Dykstra, Faehn, Frost, Fryslie, Gassman, Gillespie, Glenski, Hargens, Heineman, Howie, Hunt, Jensen, Jerke, Klaudt, Kraus, Krebs, Lange, McCoy, Miles, Novstrup, Olson (Ryan), Pederson (Gordon), Rausch, Rave, Rhoden, Rounds, Schafer, Sebert, Tornow, Van Etten, Wick, and Willadsen and Senators Greenfield, Abdallah, Apa, Bartling, Bogue, Broderick, Duenwald, Earley, Gray, Hansen (Tom), Hanson (Gary), Kelly, Kloucek, Koskan, Lintz, McNenny, Moore, Napoli, and Schoenbeck

1 FOR AN ACT ENTITLED, An Act to prohibit the distribution of contraceptives to public  
2 school students, to prohibit public school employees from referring public school students  
3 to abortion or family planning services, and to provide penalties therefor.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That chapter 13-33A be amended by adding thereto a NEW SECTION to read  
6 as follows:

7 No person may dispense, provide, or otherwise distribute in a public school or on public  
8 school property, any contraceptive or abortifacient drug, contraceptive device, or other similar  
9 drug or device.

10 A violation of this section is a Class 1 misdemeanor.

11 Section 2. That chapter 13-33A be amended by adding thereto a NEW SECTION to read  
12 as follows:



1       No employee of a school district, while performing employment duties, may send, direct,  
2       or accompany any student of that school district for abortion or family planning services, unless  
3       the employee is the parent or legal guardian of the student.

4       A violation of this Act is a Class 2 misdemeanor.

5       Section 3. The provisions of this Act do not apply to any school governed by the provisions  
6       of chapter 13-39.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

418M0394

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1210** - 02/03/2006

Introduced by: Representative O'Brien and Senators Knudson and Bogue

1 FOR AN ACT ENTITLED, An Act to adopt the revised Uniform Arbitration Act and to repeal  
2 certain provisions regarding arbitration.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. In this Act:

- 5 (1) "Arbitration organization" means an association, agency, board, commission, or other  
6 entity that is neutral and initiates, sponsors, or administers an arbitration proceeding  
7 or is involved in the appointment of an arbitrator;
- 8 (2) "Arbitrator" means an individual appointed to render an award, alone or with others,  
9 in a controversy that is subject to an agreement to arbitrate;
- 10 (3) "Court" means a court of competent jurisdiction in this state;
- 11 (4) "Knowledge" means actual knowledge;
- 12 (5) "Person" means an individual, corporation, business trust, estate, trust, partnership,  
13 limited liability company, association, joint venture, government; governmental  
14 subdivision, agency, or instrumentality; public corporation; or any other legal or  
15 commercial entity





(6) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Section 2. (a) Except as otherwise provided in this Act, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

(b) A person has notice if the person has knowledge of the notice or has received notice.

(c) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

Section 3. (a) This Act governs an agreement to arbitrate made after June 30, 2006.

(b) This Act governs an agreement to arbitrate made before July 1, 2006, if all the parties to the agreement or to the arbitration proceeding so agree in a record.

(c) After June 30, 2007, this Act governs an agreement to arbitrate whenever made.

Section 4. (a) Except as otherwise provided in subsections (b) and (c), a party to an agreement to arbitrate or to an arbitration proceeding may waive or, the parties may vary the effect of, the requirements of this Act to the extent permitted by law.

(b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(1) Waive or agree to vary the effect of the requirements of section 5(a), 6(a), 8, 17(a), 17(b), 26, or 28 of this Act;

(2) Agree to unreasonably restrict the right under section 9 of this Act to notice of the initiation of an arbitration proceeding;

(3) Agree to unreasonably restrict the right under section 12 of this Act to disclosure of any facts by a neutral arbitrator; or

1       (4) Waive the right under section 16 of this Act of a party to an agreement to arbitrate  
2           to be represented by a lawyer at any proceeding or hearing under this Act, but an  
3           employer and a labor organization may waive the right to representation by a lawyer  
4           in a labor arbitration.

5       (c) A party to an agreement to arbitrate or arbitration proceeding may not waive, or the  
6       parties may not vary the effect of, the requirements of this section or sections 3(a) or (c), 7, 14,  
7       18, 20(d) or (e), 22, 23, 24, 25(a) or (b), 29, 30, 31, or 32 of this Act.

8       Section 5. (a) Except as otherwise provided in section 28 of this Act, an application for  
9       judicial relief under this Act must be made by motion to the court and heard in the manner  
10      provided by law or rule of court for making and hearing motions.

11      (b) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial  
12      motion to the court under this Act must be served in the manner provided by law for the service  
13      of a summons in a civil action. Otherwise, notice of the motion must be given in the manner  
14      provided by law or rule of court for serving motions in pending cases.

15      Section 6. (a) An agreement contained in a record to submit to arbitration any existing or  
16      subsequent controversy arising between the parties to the agreement is valid, enforceable, and  
17      irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

18      (b) The court shall decide whether an agreement to arbitrate exists or a controversy is subject  
19      to an agreement to arbitrate.

20      (c) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled  
21      and whether a contract containing a valid agreement to arbitrate is enforceable.

22      (d) If a party to a judicial proceeding challenges the existence of, or claims that a  
23      controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue  
24      pending final resolution of the issue by the court, unless the court otherwise orders.

1       Section 7. (a) On motion of a person showing an agreement to arbitrate and alleging another  
2 person's refusal to arbitrate pursuant to the agreement:

3       (1) If the refusing party does not appear or does not oppose the motion, the court shall  
4 order the parties to arbitrate; and

5       (2) If the refusing party opposes the [motion], the court shall proceed summarily to  
6 decide the issue and order the parties to arbitrate unless it finds that there is no  
7 enforceable agreement to arbitrate.

8       (b) On motion of a person alleging that an arbitration proceeding has been initiated or  
9 threatened but that there is no agreement to arbitrate, the court shall proceed summarily to  
10 decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall  
11 order the parties to arbitrate.

12       (c) If the court finds that there is no enforceable agreement, it may not pursuant to  
13 subsection (a) or (b) order the parties to arbitrate.

14       (d) The court may not refuse to order arbitration because the claim subject to arbitration  
15 lacks merit or grounds for the claim have not been established.

16       (e) If a proceeding involving a claim referable to arbitration under an alleged agreement to  
17 arbitrate is pending in court, a motion under this section must be made in that court. Otherwise  
18 a motion under this section may be made in any court as provided in section 27 of this Act.

19       (f) If a party makes a motion to the court to order arbitration, the court on just terms shall  
20 stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until  
21 the court renders a final decision under this section.

22       (g) If the court orders arbitration, the court on just terms shall stay any judicial proceeding  
23 that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable,  
24 the court may limit the stay to that claim.

1       Section 8. (a) Before an arbitrator is appointed and is authorized and able to act, the court,  
2       upon motion of a party to an arbitration proceeding and for good cause shown, may enter an  
3       order for provisional remedies to protect the effectiveness of the arbitration proceeding to the  
4       same extent and under the same conditions as if the controversy were the subject of a civil  
5       action.

6       (b) After an arbitrator is appointed and is authorized and able to act:

7       (1)    The arbitrator may issue such orders for provisional remedies, including interim  
8              awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration  
9              proceeding and to promote the fair and expeditious resolution of the controversy, to  
10             the same extent and under the same conditions as if the controversy were the subject  
11             of a civil action; and

12       (2)    A party to an arbitration proceeding may move the court for a provisional remedy  
13              only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator  
14              cannot provide an adequate remedy.

15       (c) A party does not waive a right of arbitration by making a motion under subsection (a)  
16       or (b).

17       Section 9. (a) A person initiates an arbitration proceeding by giving notice in a record to the  
18       other parties to the agreement to arbitrate in the agreed manner between the parties or, in the  
19       absence of agreement, by certified or registered mail, return receipt requested and obtained, or  
20       by service as authorized for the commencement of a civil action. The notice must describe the  
21       nature of the controversy and the remedy sought.

22       (b) Unless a person objects for lack or insufficiency of notice under section 15(c) of this Act  
23       not later than the beginning of the arbitration hearing, the person by appearing at the hearing  
24       waives any objection to lack of or insufficiency of notice.

1       Section 10. (a) Except as otherwise provided in subsection (c), upon motion of a party to an  
2       agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of  
3       separate arbitration proceedings as to all or some of the claims if:

4       (1)    There are separate agreements to arbitrate or separate arbitration proceedings  
5               between the same persons or one of them is a party to a separate agreement to  
6               arbitrate or a separate arbitration proceeding with a third person;

7       (2)    The claims subject to the agreements to arbitrate arise in substantial part from the  
8               same transaction or series of related transactions;

9       (3)    The existence of a common issue of law or fact creates the possibility of conflicting  
10              decisions in the separate arbitration proceedings; and

11       (4)    Prejudice resulting from a failure to consolidate is not outweighed by the risk of  
12              undue delay or prejudice to the rights of or hardship to parties opposing  
13              consolidation.

14       (b) The court may order consolidation of separate arbitration proceedings as to some claims  
15       and allow other claims to be resolved in separate arbitration proceedings.

16       (c) The court may not order consolidation of the claims of a party to an agreement to  
17       arbitrate if the agreement prohibits consolidation.

18       Section 11. (a) If the parties to an agreement to arbitrate agree on a method for appointing  
19       an arbitrator, that method must be followed, unless the method fails. If the parties have not  
20       agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act  
21       and a successor has not been appointed, the court, on motion of a party to the arbitration  
22       proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an  
23       arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

24       (b) An individual who has a known, direct, and material interest in the outcome of the

1 arbitration proceeding or a known, existing, and substantial relationship with a party may not  
2 serve as an arbitrator required by an agreement to be neutral.

3 Section 12. (a) Before accepting appointment, an individual who is requested to serve as an  
4 arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to  
5 arbitrate and arbitration proceeding and to any other arbitrators any known facts that a  
6 reasonable person would consider likely to affect the impartiality of the arbitrator in the  
7 arbitration proceeding, including:

8 (1) A financial or personal interest in the outcome of the arbitration proceeding; and

9 (2) An existing or past relationship with any of the parties to the agreement to arbitrate  
10 or the arbitration proceeding, their counsel or representatives, a witness, or another  
11 arbitrator.

12 (b) An arbitrator has a continuing obligation to disclose to all parties to the agreement to  
13 arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator  
14 learns after accepting appointment which a reasonable person would consider likely to affect  
15 the impartiality of the arbitrator.

16 (c) If an arbitrator discloses a fact required by subsection (a) or (b) to be disclosed and a  
17 party timely objects to the appointment or continued service of the arbitrator based upon the fact  
18 disclosed, the objection may be a ground under section 23(a)(2) of this Act for vacating an  
19 award made by the arbitrator.

20 (d) If the arbitrator did not disclose a fact as required by subsection (a) or (b), upon timely  
21 objection by a party, the court under section 23(a)(2) of this Act may vacate an award.

22 (e) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and  
23 material interest in the outcome of the arbitration proceeding or a known, existing, and  
24 substantial relationship with a party is presumed to act with evident partiality under section

1 23(a)(2) of this Act.

2 (f) If the parties to an arbitration proceeding agree to the procedures of an arbitration  
3 organization or any other procedures for challenges to arbitrators before an award is made,  
4 substantial compliance with those procedures is a condition precedent to a motion to vacate an  
5 award on that ground under section 23(a)(2) of this Act.

6 Section 13. If there is more than one arbitrator, the powers of an arbitrator must be exercised  
7 by a majority of the arbitrators, but all of them shall conduct the hearing under section 15(c) of  
8 this Act.

9 Section 14. (a) An arbitrator or an arbitration organization acting in that capacity is immune  
10 from civil liability to the same extent as a judge of a court of this state acting in a judicial  
11 capacity.

12 (b) The immunity afforded by this section supplements any immunity under other law.

13 (c) The failure of an arbitrator to make a disclosure required by section 12 of this Act does  
14 not cause any loss of immunity under this section.

15 (d) In a judicial, administrative, or similar proceeding, an arbitrator or representative of an  
16 arbitration organization is not competent to testify, and may not be required to produce records  
17 as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to  
18 the same extent as a judge of a court of this state acting in a judicial capacity. This subsection  
19 does not apply:

20 (1) To the extent necessary to determine the claim of an arbitrator, arbitration  
21 organization, or representative of the arbitration organization against a party to the  
22 arbitration proceeding; or

23 (2) To a hearing on a motion to vacate an award under section 23(a)(1) or (2) of this Act  
24 if the movant establishes prima facie that a ground for vacating the award exists.

1 (e) If a person commences a civil action against an arbitrator, arbitration organization, or  
2 representative of an arbitration organization arising from the services of the arbitrator,  
3 organization, or representative or if a person seeks to compel an arbitrator or a representative  
4 of an arbitration organization to testify or produce records in violation of subsection (d), and the  
5 court decides that the arbitrator, arbitration organization, or representative of an arbitration  
6 organization is immune from civil liability or that the arbitrator or representative of the  
7 organization is not competent to testify, the court shall award to the arbitrator, organization, or  
8 representative reasonable attorney's fees and other reasonable expenses of litigation.

9 Section 15. (a) An arbitrator may conduct an arbitration in such manner as the arbitrator  
10 considers appropriate for a fair and expeditious disposition of the proceeding. The authority  
11 conferred upon the arbitrator includes the power to hold conferences with the parties to the  
12 arbitration proceeding before the hearing and, among other matters, determine the admissibility,  
13 relevance, materiality, and weight of any evidence.

14 (b) An arbitrator may decide a request for summary disposition of a claim or particular issue:

15 (1) If all interested parties agree; or

16 (2) Upon request of one party to the arbitration proceeding if that party gives notice to  
17 all other parties to the proceeding, and the other parties have a reasonable opportunity  
18 to respond.

19 (c) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice  
20 of the hearing not less than five days before the hearing begins. Unless a party to the arbitration  
21 proceeding makes an objection to lack or insufficiency of notice not later than the beginning of  
22 the hearing, the party's appearance at the hearing waives the objection. Upon request of a party  
23 to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative,  
24 the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the



1 hearing to a time later than that fixed by the agreement to arbitrate for making the award unless  
2 the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and  
3 decide the controversy upon the evidence produced although a party who was duly notified of  
4 the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to  
5 conduct the hearing promptly and render a timely decision.

6 (d) At a hearing under subsection (c), a party to the arbitration proceeding has a right to be  
7 heard, to present evidence material to the controversy, and to cross-examine witnesses appearing  
8 at the hearing.

9 (e) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement  
10 arbitrator must be appointed in accordance with section 11 of this Act to continue the  
11 proceeding and to resolve the controversy.

12 Section 16. A party to an arbitration proceeding may be represented by a lawyer.

13 Section 17. (a) An arbitrator may issue a subpoena for the attendance of a witness and for  
14 the production of records and other evidence at any hearing and may administer oaths. A  
15 subpoena must be served in the manner for service of subpoenas in a civil action and, upon  
16 motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the  
17 manner for enforcement of subpoenas in a civil action.

18 (b) In order to make the proceedings fair, expeditious, and cost effective, upon request of  
19 a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any  
20 witness to be taken for use as evidence at the hearing, including a witness who cannot be  
21 subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions  
22 under which the deposition is taken.

23 (c) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the  
24 circumstances, taking into account the needs of the parties to the arbitration proceeding and

1 other affected persons and the desirability of making the proceeding fair, expeditious, and cost  
2 effective.

3 (d) If an arbitrator permits discovery under subsection (c), the arbitrator may order a party  
4 to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue  
5 subpoenas for the attendance of a witness and for the production of records and other evidence  
6 at a discovery proceeding, and take action against a noncomplying party to the extent a court  
7 could if the controversy were the subject of a civil action in this state.

8 (e) An arbitrator may issue a protective order to prevent the disclosure of privileged  
9 information, confidential information, trade secrets, and other information protected from  
10 disclosure to the extent a court could if the controversy were the subject of a civil action in this  
11 state.

12 (f) All laws compelling a person under subpoena to testify and all fees for attending a  
13 judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration  
14 proceeding as if the controversy were the subject of a civil action in this state.

15 (g) The court may enforce a subpoena or discovery-related order for the attendance of a  
16 witness within this state and for the production of records and other evidence issued by an  
17 arbitrator in connection with an arbitration proceeding in another state upon conditions  
18 determined by the court so as to make the arbitration proceeding fair, expeditious, and cost  
19 effective. A subpoena or discovery-related order issued by an arbitrator in another state must  
20 be served in the manner provided by law for service of subpoenas in a civil action in this state  
21 and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced  
22 in the manner provided by law for enforcement of subpoenas in a civil action in this state.

23 Section 18. If an arbitrator makes a preaward ruling in favor of a party to the arbitration  
24 proceeding, the party may request the arbitrator to incorporate the ruling into an award under

1 section 19 of this Act. A prevailing party may make a motion to the court for an expedited order  
2 to confirm the award under section 22 of this Act, in which case the court shall summarily  
3 decide the motion. The court shall issue an order to confirm the award unless the court vacates,  
4 modifies, or corrects the award under section 23 or 24 of this Act.

5 Section 19. (a) An arbitrator shall make a record of an award. The record must be signed or  
6 otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the  
7 arbitration organization shall give notice of the award, including a copy of the award, to each  
8 party to the arbitration proceeding.

9 (b) An award must be made within the time specified by the agreement to arbitrate or, if not  
10 specified therein, within the time ordered by the court. The court may extend or the parties to  
11 the arbitration proceeding may agree in a record to extend the time. The court or the parties may  
12 do so within or after the time specified or ordered. A party waives any objection that an award  
13 was not timely made unless the party gives notice of the objection to the arbitrator before  
14 receiving notice of the award.

15 Section 20. (a) On motion to an arbitrator by a party to an arbitration proceeding, the  
16 arbitrator may modify or correct an award:

- 17 (1) Upon a ground stated in section 24(a)(1) or (3) of this Act;  
18 (2) Because the arbitrator has not made a final and definite award upon a claim  
19 submitted by the parties to the arbitration proceeding; or  
20 (3) To clarify the award.

21 (b) A motion under subsection (a) must be made and notice given to all parties within twenty  
22 days after the movant receives notice of the award.

23 (c) A party to the arbitration proceeding must give notice of any objection to the motion  
24 within ten days after receipt of the notice.

1 (d) If a motion to the court is pending under section 22, 23, or 24 of this Act, the court may  
2 submit the claim to the arbitrator to consider whether to modify or correct the award:

3 (1) Upon a ground stated in section 24(a)(1) or (3) of this Act;

4 (2) Because the arbitrator has not made a final and definite award upon a claim  
5 submitted by the parties to the arbitration proceeding; or

6 (3) To clarify the award.

7 (e) An award modified or corrected pursuant to this section is subject to sections 19(a), 22,  
8 23, and 24 of this Act.

9 Section 21. (a) An arbitrator may award punitive damages or other exemplary relief if such  
10 an award is authorized by law in a civil action involving the same claim and the evidence  
11 produced at the hearing justifies the award under the legal standards otherwise applicable to the  
12 claim.

13 (b) An arbitrator may award reasonable attorney's fees and other reasonable expenses of  
14 arbitration if such an award is authorized by law in a civil action involving the same claim or  
15 by the agreement of the parties to the arbitration proceeding.

16 (c) As to all remedies other than those authorized by subsections (a) and (b), an arbitrator  
17 may order such remedies as the arbitrator considers just and appropriate under the circumstances  
18 of the arbitration proceeding. The fact that such a remedy could not or would not be granted by  
19 the court is not a ground for refusing to confirm an award under section 22 of this Act or for  
20 vacating an award under section 23 of this Act.

21 (d) An arbitrator's expenses and fees, together with other expenses, must be paid as provided  
22 in the award.

23 (e) If an arbitrator awards punitive damages or other exemplary relief under subsection (a),  
24 the arbitrator shall specify in the award the basis in fact justifying and the basis in law

1 authorizing the award and state separately the amount of the punitive damages or other  
2 exemplary relief.

3 Section 22. After a party to an arbitration proceeding receives notice of an award, the party  
4 may make a motion to the court for an order confirming the award at which time the court shall  
5 issue a confirming order unless the award is modified or corrected pursuant to section 20 or 24  
6 of this Act or is vacated pursuant to section 23 of this Act.

7 Section 23. (a) Upon motion to the court by a party to an arbitration proceeding, the court  
8 shall vacate an award made in the arbitration proceeding if:

9 (1) The award was procured by corruption, fraud, or other undue means;

10 (2) There was:

11 (A) Evident partiality by an arbitrator appointed as a neutral arbitrator;

12 (B) Corruption by an arbitrator; or

13 (C) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration  
14 proceeding;

15 (3) An arbitrator refused to postpone the hearing upon showing of sufficient cause for  
16 postponement, refused to consider evidence material to the controversy, or otherwise  
17 conducted the hearing contrary to section 15 of this Act, so as to prejudice  
18 substantially the rights of a party to the arbitration proceeding;

19 (4) An arbitrator exceeded the arbitrator's powers;

20 (5) There was no agreement to arbitrate, unless the person participated in the arbitration  
21 proceeding without raising the objection under section 15(c) of this Act not later than  
22 the beginning of the arbitration hearing; or

23 (6) The arbitration was conducted without proper notice of the initiation of an arbitration  
24 as required in section 9 of this Act so as to prejudice substantially the rights of a party

1 to the arbitration proceeding.

2 (b) A motion under this section must be filed within ninety days after the movant receives  
3 notice of the award pursuant to section 19 of this Act or within ninety days after the movant  
4 receives notice of a modified or corrected award pursuant to section 20 of this Act, unless the  
5 movant alleges that the award was procured by corruption, fraud, or other undue means, in  
6 which case the motion must be made within ninety days after the ground is known or by the  
7 exercise of reasonable care would have been known by the movant.

8 (c) If the court vacates an award on a ground other than that set forth in subsection (a)(5),  
9 it may order a rehearing. If the award is vacated on a ground stated in subsection (a)(1) or (2),  
10 the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in  
11 subsection (a)(3), (4), or (6), the rehearing may be before the arbitrator who made the award or  
12 the arbitrator's successor. The arbitrator must render the decision in the rehearing within the  
13 same time as that provided in section 19(b) of this Act for an award.

14 (d) If the court denies a motion to vacate an award, it shall confirm the award unless a  
15 motion to modify or correct the award is pending.

16 Section 24. (a) Upon motion made within ninety days after the movant receives notice of  
17 the award pursuant to section 19 of this Act or within ninety days after the movant receives  
18 notice of a modified or corrected award pursuant to section 20 of this Act, the court shall modify  
19 or correct the award if:

- 20 (1) There was an evident mathematical miscalculation or an evident mistake in the  
21 description of a person, thing, or property referred to in the award;
- 22 (2) The arbitrator has made an award on a claim not submitted to the arbitrator and the  
23 award may be corrected without affecting the merits of the decision upon the claims  
24 submitted; or

1       (3) The award is imperfect in a matter of form not affecting the merits of the decision on  
2           the claims submitted.

3       (b) If a motion made under subsection (a) is granted, the court shall modify or correct and  
4       confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending,  
5       the court shall confirm the award.

6       (c) A motion to modify or correct an award pursuant to this section may be joined with a  
7       motion to vacate the award.

8       Section 25. (a) Upon granting an order confirming, vacating without directing a rehearing,  
9       modifying, or correcting an award, the court shall enter a judgment in conformity therewith. The  
10      judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

11      (b) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

12      (c) On application of a prevailing party to a contested judicial proceeding under section 22,  
13      23, or 24 of this Act, the court may add reasonable attorney's fees and other reasonable expenses  
14      of litigation incurred in a judicial proceeding after the award is made to a judgment confirming,  
15      vacating without directing a rehearing, modifying, or correcting an award.

16      Section 26. (a) A court of this state having jurisdiction over the controversy and the parties  
17      may enforce an agreement to arbitrate.

18      (b) An agreement to arbitrate providing for arbitration in this state confers exclusive  
19      jurisdiction on the court to enter judgment on an award under this Act.

20      Section 27. A motion pursuant to section 5 of this Act must be made in the court of the  
21      county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if  
22      the hearing has been held, in the court of the county in which it was held. Otherwise, the motion  
23      may be made in the court of any county in which an adverse party resides or has a place of  
24      business or, if no adverse party has a residence or place of business in this state, in the court of

any county in this state. All subsequent motions must be made in the court hearing the initial motion unless the court otherwise directs.

Section 28. (a) An appeal may be taken from:

- (1) An order denying a motion to compel arbitration;
- (2) An order granting a motion to stay arbitration;
- (3) An order confirming or denying confirmation of an award;
- (4) An order modifying or correcting an award;
- (5) An order vacating an award without directing a rehearing; or
- (6) A final judgment entered pursuant to this Act.

(b) An appeal under this section must be taken as from an order or a judgment in a civil action.

Section 29. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 30. The provisions of this Act governing the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act.

Section 31. That § 21-25A-3 be amended to read as follows:

21-25A-3. This chapter does not apply to insurance policies and every provision in any such policy requiring arbitration or restricting a party thereto or beneficiary thereof from enforcing any right under it by usual legal proceedings in ordinary tribunals or limiting the time to do so is void and unenforceable. However, nothing in this chapter may be deemed to impair the enforcement of or invalidate a contractual provision for arbitration entered into between



1 insurance companies or a policy issued to an exempt commercial policyholder as defined by  
2 § 58-24-68.

3 Section 32. Sections 21-25A-1, 21-25A-2, and 21-25A-4 to 21-25A-38, inclusive, are  
4 repealed on July 1, 2007.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

943M0541

HOUSE EDUCATION COMMITTEE ENGROSSED NO.

**HB 1217** - 02/03/2006

Introduced by: Representatives Hunt, Brunner, Davis, Deadrick, Dykstra, Glenski, Hackl, Heineman, Howie, Hunhoff, Jensen, Jerke, Koistinen, Kraus, Krebs, Lange, McCoy, Michels, Miles, Novstrup, Olson (Ryan), Peters, Rausch, Rave, Rhoden, Rounds, Tornow, Turbiville, Van Etten, Weems, Wick, and Willadsen and Senators Bartling, Duenwald, Earley, Greenfield, Kelly, Kloucek, Koskan, Lintz, Napoli, and Schoenbeck

1 FOR AN ACT ENTITLED, An Act to provide for the clarification of sexual abstinence  
2 instruction and to condition the acceptance of federal funding contrary to the provisions of  
3 this Act.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That chapter 13-33 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 The Legislature finds that when character development instruction is provided by elementary  
8 and secondary schools pursuant to § 13-33-6.1, there is a need to clarify what sexual abstinence  
9 is and how it should be taught.

10 Section 2. That chapter 13-33 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 The provisions of this Act apply to any school district or system whose governing body  
13 elects to instruct its students in a course, unit, class, series of classes, activity, or presentation



1 of sex education, sexual abstinence, or the biological, physical, emotion, psychological,  
2 hygienic, economic or social aspects of human sexuality. In such instances, the school shall  
3 instruct its students in sexual abstinence consistent with the provisions of this Act.

4 Section 3. That chapter 13-33 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 The instruction of sexual abstinence shall teach that abstinence from sexual activity is the  
7 responsible and only effective method of eliminating the risk of unplanned or out-of-wedlock  
8 pregnancy and sexually transmitted diseases or infections. The instruction shall also teach that  
9 it is the expected standard for students to abstain from sexual activity until they are married.

10 The instruction of sexual abstinence may not include models of instruction based on risk  
11 reduction encouraging, promoting, and providing instruction in the use of contraceptive drugs,  
12 devices, or methods.

13 Section 4. That chapter 13-33 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 Materials and instruction in sexual abstinence shall recognize parents or legal guardians as  
16 the primary sex educators of their children, be age-appropriate, medically referenced, as  
17 appropriate, and shall do at least all of the following:

- 18 (1) Inform students that engaging in unlawful sexual activity may be a crime punishable  
19 by law;
- 20 (2) Inform students concerning the biology of human sexuality as well as reproductive  
21 physiology and anatomy;
- 22 (3) Emphasize to students the benefits of abstaining from sexual activity until marriage  
23 as well as the benefits of ceasing sexual activity if a student is sexually active;
- 24 (4) Emphasize to students that the student has the power to control personal behavior.

1 Students should be taught to base their actions on reasoning, self-discipline, a sense  
2 of responsibility, self-control, and ethical considerations such as respect for self and  
3 others;

4 (5) Discuss with students the possible physical, emotional, economic, and legal  
5 consequences of sexual activity and advise students of the laws pertaining to their  
6 responsibility as parents to children born in and out of wedlock;

7 (6) Provide students with information pertaining to (A) the risks associated with sexual  
8 activity that lead to the possible transmission and contraction of sexually transmitted  
9 diseases or infections including HIV/AIDS; (B) pertaining to the recognition and  
10 treatment of sexually transmitted diseases or infections; (C) that sexual abstinence  
11 is the only means of eliminating these risks;

12 (7) Provide students with instruction relevant to recognizing and analyzing cultural  
13 influences and skills associated with goal setting and decision making;

14 (8) Provide students with instruction on skills related to healthy dating relationships:  
15 how to set limits, how to recognize a dangerous environment and exit the situation,  
16 and how increased vulnerability to sexual activity is associated with alcohol and drug  
17 use. Teach that it is wrong to take advantage of, harass, or exploit another person  
18 sexually;

19 (9) Teach refusal skills and encourage students to resist pressures to engage in any sexual  
20 activity; and

21 (10) Provide students with instruction regarding the importance of prenatal care for the  
22 benefit of the mother and baby.

23 Section 5. That chapter 13-33 be amended by adding thereto a NEW SECTION to read as  
24 follows:

1 Materials and instruction used to instruct sexual abstinence may not be excessively graphic  
2 or explicit and may not include any explicit description of sexual activity that encourages  
3 sexually erotic, lewd, or obscene behavior. Instruction may not encourage, promote, or provide  
4 instruction in the use of contraceptive drugs, devices, or methods.

5 Section 6. That chapter 13-33 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 The governing body of any school district or system offering instruction in sex education,  
8 human sexuality, or sexual abstinence shall establish an advisory board made up of a majority  
9 of parents or legal guardians. The board shall participate in the evaluation and selection of  
10 curriculum and materials.

11 Section 7. That chapter 13-33 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 The governing body of the school district or system shall determine terms of service for the  
14 advisory board, the number of members to serve on the advisory board, and a membership  
15 selection process that reasonably reflects the school population. The board shall appoint two co-  
16 chairs for the advisory board, at least one of whom is a parent of a child attending a school  
17 operated by the school district or system and is not employed by any school district or system.  
18 At least one-half of the members of the advisory board shall be parents who have children  
19 attending a school operated by the school district or system. A majority of these parent members  
20 shall be persons who are not employed by any school district or system.

21 Section 8. That chapter 13-33 be amended by adding thereto a NEW SECTION to read as  
22 follows:

23 Before final adoption of any curriculum, materials, methods, or any revisions thereto, related  
24 to sex education, human sexuality, or sexual abstinence used in instruction in accordance with

1 this Act, the governing body of the school district or system shall allow any parent, legal  
2 guardian, or citizen, who is interested in viewing the materials, ready access to such materials,  
3 and hold one or more open public hearings on the proposed curriculum, methods, materials, or  
4 revisions.

5 Section 9. That chapter 13-33 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 No student may be enrolled in a course or participate in a unit, class, series of classes,  
8 activity, or presentation, in which the subjects of human sexuality, sex education, or sexual  
9 abstinence are discussed, unless the student's parent or legal guardian is notified in advance in  
10 writing. Notification shall include information regarding the content of the course, unit, class,  
11 series of classes, activity, or presentation; the opportunity to review the materials and methods  
12 to be used in the course; and the right of the parent or legal guardian to exempt the student from  
13 being present for any instruction.

14 Upon the written request of a student's parent or legal guardian, the student shall be excused,  
15 without academic penalty or other sanction from attending a course, unit, class, series of classes,  
16 activity, or presentation pertaining to human sexuality, sex education, or sexual abstinence. Any  
17 student who is excused from a course, unit, class, series of classes, activity, or presentation shall  
18 be provided flexible instructional alternatives with agreement from both parent or legal guardian  
19 and school officials.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

400M0672

HOUSE APPROPRIATIONS COMMITTEE ENGROSSED

NO. **HB 1237** - 02/03/2006

Introduced by: The Committee on Appropriations at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to make an appropriation to fund tax refunds for elderly and  
2 disabled persons and to revise the income eligibility requirements for property tax and sales  
3 tax refunds.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. There is hereby appropriated from the state general fund the sum of one million  
6 dollars (\$1,000,000), or so much thereof as may be necessary, to the Department of Revenue  
7 and Regulation to provide refunds for real property tax and sales tax to elderly and disabled  
8 persons pursuant to chapters 10-18A and 10-45A. An amount not to exceed ten thousand dollars  
9 in fiscal year 2007 may be used for the administrative costs of this Act.

10 Section 2. The secretary of revenue and regulation shall approve vouchers and the state  
11 auditor shall draw warrants to pay expenditures authorized by this Act.

12 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by  
13 June 30, 2007, shall revert in accordance with § 4-8-21.

14 Section 4. That § 10-18A-5 be amended to read as follows:

15 10-18A-5. The amount of refund of real property taxes due or paid for a single-member



2			The refund of real
3	If household income is		property taxes due
4	more than:	but less than	or paid shall be
5	\$ 0	<del>\$3,500</del> <u>\$3,750</u>	35%
6	<del>3,501</del> <u>3,751</u>	<del>3,760</del> <u>4,010</u>	34%
7	<del>3,761</del> <u>4,011</u>	<del>4,020</del> <u>4,270</u>	33%
8	<del>4,021</del> <u>4,271</u>	<del>4,280</del> <u>4,530</u>	32%
9	<del>4,281</del> <u>4,531</u>	<del>4,540</del> <u>4,790</u>	31%
10	<del>4,541</del> <u>4,791</u>	<del>4,800</del> <u>5,050</u>	30%
11	<del>4,801</del> <u>5,051</u>	<del>5,060</del> <u>5,310</u>	29%
12	<del>5,061</del> <u>5,311</u>	<del>5,320</del> <u>5,570</u>	28%
13	<del>5,321</del> <u>5,571</u>	<del>5,580</del> <u>5,830</u>	27%
14	<del>5,581</del> <u>5,831</u>	<del>5,840</del> <u>6,090</u>	26%
15	<del>5,841</del> <u>6,091</u>	<del>6,100</del> <u>6,350</u>	25%
16	<del>6,101</del> <u>6,351</u>	<del>6,360</del> <u>6,610</u>	24%
17	<del>6,361</del> <u>6,611</u>	<del>6,620</del> <u>6,870</u>	23%
18	<del>6,621</del> <u>6,871</u>	<del>6,880</del> <u>7,130</u>	22%
19	<del>6,881</del> <u>7,131</u>	<del>7,140</del> <u>7,390</u>	21%
20	<del>7,141</del> <u>7,391</u>	<del>7,400</del> <u>7,650</u>	20%
21	<del>7,401</del> <u>7,651</u>	<del>7,660</del> <u>7,910</u>	19%
22	<del>7,661</del> <u>7,911</u>	<del>7,920</del> <u>8,170</u>	18%
23	<del>7,921</del> <u>8,171</u>	<del>8,180</del> <u>8,430</u>	17%
24	<del>8,181</del> <u>8,431</u>	<del>8,440</del> <u>8,690</u>	16%
25	<del>8,441</del> <u>8,691</u>	<del>8,700</del> <u>8,950</u>	15%
26	<del>8,701</del> <u>8,951</u>	<del>8,960</del> <u>9,210</u>	14%
27	<del>8,961</del> <u>9,211</u>	<del>9,220</del> <u>9,470</u>	13%
28	<del>9,221</del> <u>9,471</u>	<del>9,480</del> <u>9,730</u>	12%
29	<del>9,481</del> <u>9,731</u>	<del>9,750</del> <u>10,000</u>	11%



1 over ~~9,750~~ 10,000 No refund

2 Section 5. That § 10-18A-6 be amended to read as follows:

3 10-18A-6. The amount of refund of real property taxes due or paid for a multiple-member  
4 household made pursuant to this chapter shall be according to the following schedule:

5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27
	If household income is																					
	more than:	but not more than																				
	\$ 0	<del>\$6,250</del> <u>\$6,500</u>																				
	<del>6,251</del> <u>6,501</u>	<del>6,611</del> <u>6,861</u>																				
	<del>6,612</del> <u>6,862</u>	<del>6,972</del> <u>7,222</u>																				
	<del>6,973</del> <u>7,223</u>	<del>7,333</del> <u>7,583</u>																				
	<del>7,334</del> <u>7,584</u>	<del>7,694</del> <u>7,944</u>																				
	<del>7,695</del> <u>7,945</u>	<del>8,055</del> <u>8,305</u>																				
	<del>8,056</del> <u>8,306</u>	<del>8,416</del> <u>8,666</u>																				
	<del>8,417</del> <u>8,667</u>	<del>8,777</del> <u>9,027</u>																				
	<del>8,778</del> <u>9,028</u>	<del>9,138</del> <u>9,388</u>																				
	<del>9,139</del> <u>9,389</u>	<del>9,499</del> <u>9,749</u>																				
	<del>9,500</del> <u>9,750</u>	<del>9,860</del> <u>10,110</u>																				
	<del>9,861</del> <u>10,111</u>	<del>10,221</del> <u>10,471</u>																				
	<del>10,222</del> <u>10,472</u>	<del>10,582</del> <u>10,832</u>																				
	<del>10,583</del> <u>10,833</u>	<del>10,943</del> <u>11,193</u>																				
	<del>10,944</del> <u>11,194</u>	<del>11,304</del> <u>11,554</u>																				
	<del>11,305</del> <u>11,555</u>	<del>11,665</del> <u>11,915</u>																				
	<del>11,666</del> <u>11,916</u>	<del>12,026</del> <u>12,276</u>																				
	<del>12,027</del> <u>12,277</u>	<del>12,387</del> <u>12,637</u>																				
	<del>12,388</del> <u>12,638</u>	<del>12,750</del> <u>13,000</u>																				
	over <del>12,750</del> <u>13,000</u>																					

28 Section 6. That § 10-45A-5 be amended to read as follows:

10-45A-5. The amount of any claim made pursuant to this chapter by a claimant from a household consisting solely of one individual shall be determined as follows:

- (1) If the claimant's income is three thousand ~~five hundred~~ seven hundred fifty dollars or less, a sum of two hundred fifty-eight dollars;
- (2) If the claimant's income is three thousand ~~five hundred one~~ seven hundred fifty-one dollars and not more than ~~nine thousand seven hundred fifty~~ ten thousand dollars, a sum of forty-six dollars plus three and four-tenths percent of the difference between ~~nine thousand seven hundred fifty~~ ten thousand dollars and the income of the claimant;
- (3) If the claimant's income is more than ~~nine thousand seven hundred fifty~~ ten thousand dollars, no refund.

Section 7. That § 10-45A-6 be amended to read as follows:

10-45A-6. The amount of any claim made pursuant to this chapter by a claimant from a household consisting of more than one individual shall be determined as follows:

- (1) If household income is six thousand ~~two hundred fifty~~ five hundred dollars or less, the sum of five hundred eighty-one dollars;
- (2) If household income is six thousand ~~two hundred fifty-one~~ five hundred one dollars and not more than ~~twelve thousand seven hundred fifty~~ thirteen thousand dollars, a sum of seventy-four dollars plus seven and eight-tenths percent of the difference between ~~twelve thousand seven hundred fifty~~ thirteen thousand dollars and total household income;
- (3) If household income is more than ~~twelve thousand seven hundred fifty~~ thirteen thousand dollars, no refund.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

664M0513

## SENATE ENGROSSED NO. **SB 78** - 01/30/2006

Introduced by: Senator Knudson and Representative Michels

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the submission of  
2 direct legislation to a vote of the people at a general election.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 2-1-2 be amended to read as follows:

5 2-1-2. The petition shall be filed in the ~~office of the secretary of state~~ Office of the Secretary  
6 of State by the first Tuesday in ~~May~~ April of a general election year for submission to the  
7 electors at the next general election.

8 Section 2. That § 2-1-6.2 be amended to read as follows:

9 2-1-6.2. The full text of any initiative petition, referred law petition, or initiated  
10 constitutional amendment petition, the date of the general election at which the initiated law or  
11 initiated constitutional amendment is to be submitted, and the names and addresses of the  
12 petition sponsors shall be filed with the secretary of state prior to circulation for signatures. The  
13 signer's post office box number may be given in lieu of a street address if the signer lives within  
14 a municipality of the second or third class. The form of the petitions shall be prescribed by the  
15 State Board of Elections. For any initiated constitutional amendment petition, no signatures may  
16 be obtained more than twenty-four months preceding the general election that was designated



1 at the time of filing of the full text. For any initiative petition, no signatures may be obtained  
2 more than ~~eighteen~~ nineteen months preceding the general election that was designated at the  
3 time of filing of the full text. An initiative petition and an initiated constitutional amendment  
4 petition shall be filed with the secretary of state by the date set forth in § 2-1-2 or 2-1-2.1, as  
5 applicable. All sections of any petition filed under this chapter shall be filed with the secretary  
6 of state simultaneously together with a sworn affidavit on forms promulgated by the State Board  
7 of Elections, signed by two-thirds of the sponsors stating that the documents filed constitute the  
8 entire petition and to the best of their knowledge contain a sufficient number of signatures.

9 Section 3. That § 12-13-9 be amended to read as follows:

10 12-13-9. Before the ~~fourth third~~ Tuesday in ~~July~~ May, the attorney general shall deliver to  
11 the secretary of state ~~the~~ an attorney general's statement; for each proposed amendment to the  
12 Constitution and each initiated measure. The attorney general's statement for each referred  
13 measure shall be delivered to the secretary of state before the second Tuesday in July. The  
14 attorney general's statement shall consist of the title, the explanation, and a clear and simple  
15 recitation of the effect of a "Yes" or "No" vote. The explanation shall ~~state succinctly~~ be an  
16 objective, clear and simple summary to educate the voters of the purpose and ~~legal~~ effect of the  
17 proposed amendment to the Constitution, the initiated measure, or the referred law. The  
18 ~~explanation shall be a clear and simple summary of the issue and~~ attorney general shall include  
19 a description of the legal consequences of the proposed amendment, the initiated measure, or  
20 the referred law, including the likely exposure of the state to liability if the proposed  
21 amendment, the initiated measure, or the referred law is adopted. The explanation may not  
22 exceed two hundred words in length. On the printed ballots, the title shall be followed by the  
23 explanation and the explanation shall be followed by the recitation.

24 Section 4. That chapter 12-13 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 In the year 2006, the attorney general's statement for each proposed amendment to the  
3 Constitution and each initiated measure shall be delivered to the secretary of state before the  
4 second Tuesday in July.

5 Section 5. That § 12-13-23 be amended to read as follows:

6 12-13-23. The secretary of state shall ~~prepare and~~ distribute public information on any  
7 constitutional amendment, initiated, or referred measure submitted to the electors for approval.  
8 The secretary of state shall compile the public information by printing a statement in support  
9 of the constitutional amendment, initiated, or referred measure written by its proponents, if any  
10 can be identified, and a statement against the constitutional amendment, initiated, or referred  
11 measure written by its opponents, if any can be identified. The secretary of state is not  
12 responsible for the contents, objectivity, or accuracy of the statements written by the proponents  
13 and opponents.

14 Section 6. That chapter 12-13 be amended by adding thereto a NEW SECTION to read as  
15 follows:

16 The secretary of state shall, within five days of delivery from the attorney general, make the  
17 attorney general's statement for each proposed amendment to the Constitution, each initiated  
18 measure, and each referred law available to any person upon request.